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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHESTER EDWARD GUTKOWSKI,

Defendant and Appellant.

H033481

(Santa Clara County

Super. Ct. No. EE706010)

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

NO CHANGE IN THE JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on December 3, 2009, be modified as follows:

1. On page 9, the first sentence of the second full paragraph, beginning with “In these circumstances” is deleted and the following sentence is inserted in its place.

In these circumstances, there is not a reasonable probability that but for the introduction of evidence of defendant’s silence after his arrest the result of the proceeding would have been different.^[2]

There is no change in judgment.

Appellant’s petition for rehearing is denied.

Dated:

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.